IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1284 of 1989
With
CIVIL APPLICATION No. 12087 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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R C SHAH,INSPECTING OFFICER
Versus
GOVT. OF GUJARAT & OTHERS

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Appearance :
MR KARIEL for MR. BP TANNA for Petitioner.
MS PHALGUNI PATEL, ASST. GOVERNMENT PLEADER for Respondents1 - 2.
RULE SERVED for Respondent(s) : 3, 5, 7, 10,
DELETED for Respondent(s) : 4, 6, 8,
RULE UNSERVED for Respondent(s) : 9,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 09/11/2006

ORAL JUDGMENT

By filing this petition, the petitioner has challenged the seniority list wherein the petitioner is shown in the seniority list below the other employees who have been joined as respondents No. 3 to 10, but since some of them have died, the petitioner has deleted such respondents.

The petitioner has filed a Civil Application being Civil Application No. 12087 of 2005 for amending the petition. In the said Civil Application, a table about service history of the petitioner is given and as per the table, the petitioner was appointed as a Clerk in the Directorate of Civil Supplies, Gandhinagar on 01.08.73. The petitioner thereafter passed pre-service training examination on 09.04.74 and he was given regular appointment as a Clerk on 09.04.74. The petitioner became eligible for appearing in the higher grade examination on 09.04.77. The petitioner passed higher grade examination in December 1979 within the stipulated trial. The petitioner was thereafter promoted as Clerk Clerk / Junior Inspector on 12.05.76. The petitioner thereafter appeared for departmental examination as per

the rules, viz. Gujarat Food & Civil Supplies Department [Qualifying] Examination Rules, 1976 in order to be eligible for higher promotion, and the petitioner was required to pass the aforesaid examination within prescribed chances. It is the case of the petitioner that he was required to pass qualifying examination by 12.05.82 and he passed the said examination on 30.11.81.

The grievance of the petitioner is that his name is not properly shown in the seniority list of Head Clerk even though he has passed the examination within the prescribed chances. It is the case of the petitioner that pursuant to his representation dated 11.05.98, the petitioner was correctly placed in the seniority list, but in the remarks column it is stated that the representation of the petitioner has been accepted and he is placed in the said position and therefore he will have to withdraw the present petition. It is the case of the petitioner that as the seniority list was provisional, the petitioner had not withdrawn the petition. It is the case of the petitioner that as he did not withdraw the present petition, in the subsequent provisional seniority list published on 23.06.99, the petitioner is pushed down and shown in the same position where he was put prior to provisional seniority list dated 01.09.98.

It is the case of the petitioner, in the seniority list produced at Annexure 65/L, the name of the petitioner is shown at Sl. No. 10, which is the correct position. In the remarks column beside his name, there is an endorsement to the effect that the representation of the petitioner is accepted and that he should withdraw the present writ petition in connection with the seniority list and should inform the department about the same. It, however, seems that the petitioner has not withdrawn the petition. However, in view of the endorsement at page 65/L of the Civil Application, it is clear that representation of the petitioner is already accepted by the Department. Mr. Kariel, learned advocate for the petitioner submitted that the name of the petitioner is correctly shown at Sl. No. 10 in the said seniority list. However, in the subsequent provisional seniority list published on 23.06.99, the petitioner is pushed down and his name is shown at Sl. No. 20. Mr. Kariel submitted that because the petitioner has not withdrawn the petition from the High Court, his name is pushed down, otherwise his representation was already accepted. He submitted that looking tot he annexure to the Civil Application for amendment, it is clear that the

Department has already accepted the representation of the petitioner, and, therefore, his name was shown at sl. no. 10 in the provisional seniority list which is subsequently changed, perhaps because the petitioner has not withdrawn this petition.

I find substance in the argument of Mr. Kariel to the effect that when the petitioner has passed the qualifying examination within the stipulated time, his seniority is required to be protected and he would not lose his seniority because those employees who are junior to him might have passed the examination earlier. What is required to be seen is: whether the petitioner has passed the examination within the stipulated chances?, and if it is found to be correct, his seniority is required to be protected. The petitioner is therefore now permitted to withdraw this petition with a liberty to make a representation to the Director, Civil Supplies Department,Gandhinagar. The petitioner may make such representation within one month from today pointing out his grievance against fixation of seniority. If any representation is made the department shall consider the same in accordance with law and as per the judgment of this Court in connection with fixation of seniority in

the matter of passing qualifying examination within stipulated time and other relevant aspects of the matter, and shall pass an appropriate order on the representation, and communicate the same to the petitioner, within a period of two months from date of receipt of the representation from the petitioner. If the representation is accepted, the name of the petitioner may be shown appropriately in the seniority suit. The petitioner is permitted to make representation in view of the fact that as per the endorsement of the department, earlier representation seems to have been accepted on condition that he should withdraw the petition, which he has not done, and now the petitioner has shown willingness to withdraw the petition so that a proper decision can be taken by the Department as per law.

Learned Assistant Government Pleader, Ms. Phalguni Patel submitted that so far as respondents No. 4 to 10 are concerned, since they are shown senior to the petitioner, the representation of the petitioner can be considered only against respondent No.3. However, this question is also left for decision of the authority as per the record. On this aspect, this Court is not required to be express any opinion as the petitioner is

permitted to make representation which should be decided by the Director, Civil Supplies Department as per law and as per the document on record.

This petition accordingly stands disposed of as withdrawn with liberty to challenge the decision in accordance with law. Rule is discharged. No order as to costs.

No order in the Civil Application.

Direct Service is permitted.

[P. B. MAJMUDAR, J.]

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